IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
Criminal Petition No. 60 of 2002

Resham Singh S/o Sri Buta Singh
R/o Locca P.S. Sitarganj Tehsil Khatima
District Udham Singh Nagar & others …Petitioners
Versus
State of Uttaranchal & others ….Respondents

Sri Alok Singh Senior Counsel appears on behalf of Petitioners
Learned A.G.A. counsel for the respondents.

Hon'ble B.C. Kandpal, J.

This petition under Section 482 Cr.P.C. has been filed by the petitioners for quashing the order dated 22.01.2002 passed by Judicial Magistrate, Khatima, District Udham Singh Nagar as well as quashing further proceeding in criminal case no. 171 of 1999 pending before the Court of Judicial Magistrate, Khatima, District Udham Singh Nagar.

Brief facts giving rise to this petition are that the opposite party no. 3 Guruvachan Singh lodged a report at Police Station Sitarganj that his mother is missing since 13.5.1998 and on 19.5.1998 the dead body of his mother was found on a field. Guruvachan Singh, thereafter filed a complaint against petitioners Resham Singh, Malkiyat Singh, Laskar Singh and Kabul Singh under Section 302/34 read with Section 201 I.P.C. Police Station Sitarganj stating therein that on 14.05.1995 at about 11.30 p.m,. the accused/petitioners came near the house of the complainant (opposite party no.3) on a tractor. They were having a Gunny Bag on the tractor. The petitioners no. 1, 2 and 3 were moving towards complainant house with gunny bag while the petitioner no. 4 was having a double barrel gun in his hand. The Gunny Bag all of a sudden opened and the

complainant as well as other persons at the spot saw a dead body inside the bag. The accused thereafter took the bag with them and threw the dead body in come field. On the next day dead body of Smt. Preetam Kaur mother of the opposite party no. 4 was found from the filed.

Post mortem of the deceased was conducted on 20.05.1998. The cause of the death could not be ascertained.

The Magistrate directed the police station Sitargaj to register and investigate the matter, who submitted the Final Report.

The complainant (respondent no. 3) filed again a complaint which was registered as criminal case No. 171 of 1999 and thereafter the statement of the complainant as well as their witnesses were recorded under Section 200 and 202 respectively.

Learned Magistrate vide his order dated 22.01.2002 came to the conclusion that the accused Resham Singh, Malkiyat Singh, Laskar Singh and Kabul Singh should be summoned to face their trail under Section 302, 201 and 34 I.P.C. as the prima facie case is made out against them.

Feeling aggrieved against the impugned order passed by the Judicial Magistrate , Khatima, District Udham Singh Nagar, the petitioners have preferred the petition under Section 482 Cr.P.C. before this Court.

Heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners have vehemently submitted before this Court that the police has submitted the Final Report in this case and thereafter when the opposite party No. 3 filed a complaint then learned Magistrate without

applying his mind, summoned the petitioners which amounts to abuse of process of law. It has also been submitted that the learned Magistrate while passing the impugned order did not consider this aspect that in this case the police earlier had submitted final report in favour of the petitioners. It has also been submitted that no case under Section 302, 201 and 34 I.P.C. is made out against the petitioners.

The First Information Report, filed as Annexure 3 to the petition clearly reveals that the complainant Guruvachan Singh has specifically mentioned the names of the accused persons and it has also been stated therein that the dead body of his mother was kept inside the Gunny Bag and the accused persons were having a Gunny Bag in their hands. Further it also reveals that the complainant has leveled the clear allegation against the petitioners in his complaint. The complaint of the opposite party no. 3 finds support with the statements of the witnesses under section 202 Cr.P.C. recorded before the court below.

I, therefore, do not find any force in these arguments advanced by the learned counsel for the petitioners that the learned Magistrate while passing the impugned order has not kept this fact in mind that earlier the Final Report was submitted in this case, as it was not necessary for the learned Magistrate while passing the impugned order to consider this aspect. The learned Magistrate had to proceed with the case in the light of the complaint as well as the statement of the witnesses recorded under section 200 and 202 Cr.P.C. respectively. The learned Magistrate on the basis of these documents, reached to the conclusion that there was a prima-facie case to proceed with the accused persons under Section 302, 34 and section 201 I.P.C

I, therefore, do not find any justification for interference in the summoning order passed by the learned Magistrate as the same has been passed by him after **perusing** the evidence at that stage.

The Hon'ble Supreme Court in the case reported in **JT 1995 (3) Supreme Court 166 State of Tamil Nadu Vs. Thirukkural Perumal** has clearly observed that " *the power of quashing the F.I.R. and criminal proceedings should be exercised sparingly by the Courts. Indeed the Court has the extraordinary or inherent power to reach out injustice and quash the First Information Report as well as criminal Proceedings, keeping in view the guidelines laid down by this Court in various judgments, but the same has to be done with circumspection. The normal process of the criminal trail cannot be cut short in a rather causal manner. The Court is not justified in embarking upon an enquiry as to the reliability or genuineness of the allegations made in the F.I.R. of complainant on the basis of evidence collected during the investigation only while dealing with the petition under Section 482 Cr.P.C. seeking the quashing the F.I.R. and the criminal proceedings."*

In view of the aforesaid observations made by the Hon'ble Superme Court, I do not find any force in this petition and the same is liable to be dismissed.

The petition is accordingly dismissed. The stay order passed by this Court dated 22.01.2002 stand vacated.

The record of court below should be returned back so that the trail court may proceed further in the matter.

(B.C. Kandpal, J.)

July 29TH, 2004
ASWAL